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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,730	04/15/2004	Philip Jacoby	13237.0001U2	6721

23859 7590 06/27/2007  
NEEDLE & ROSENBERG, P.C.  
SUITE 1000  
999 PEACHTREE STREET  
ATLANTA, GA 30309-3915

EXAMINER
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CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1772

MAIL DATE	DELIVERY MODE
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06/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/824,730

Applicant(s)

JACOBY, PHILIP

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 17-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 12-16 and 25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **RESPONSE TO AMENDMENT**

### ***Request for Continued Examination***

1. The Request for Continued Examination (RCE) under 37 CFR 1.53 (d) filed on May 23, 2007 is acceptable and a RCE has been established. An action on the RCE follows.
2. Claims 10-29 are pending in the application, claims 11 and 17-24 are withdrawn from consideration. Claims 1-9 have been cancelled.

### ***REJECTIONS***

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

### ***Claim Rejections - 35 USC § 103***

4. Claims 10, 12-16 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mercer (U.S. Patent No. 4,374,798) in view of Jacoby et al. (U.S. Patent No. 5,310,584).

Mercer discloses a polypropylene web comprising a perforated sheet (*figures 1 and 2*) that is biaxially oriented and wherein the web has thickness in the node junction region between the machine direction and transverse direction strands (*col. 2, lines 35-60*).

Mercer fails to disclose a polypropylene web comprising a propylene polymer comprising beta-spherulites in an amount sufficient to produce a K-value of about 0.2 to 0.95 when measured by x-ray diffraction or to show a beta crystalline melting peak during the first or second heating scan when measured using a differential scanning calorimeter.

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Jacoby discloses a polypropylene sheet (title) comprising a propylene polymer comprising beta-spherulites in an amount sufficient to produce a K-value of about 0.2 to 0.95 (*col. 3, lines 15-18*). The sheet exhibits improved sidewall strength, reduced warp, improved low-temperature impact resistance etc. (*col. 3, lines 20-30*).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Jacoby's polypropylene material as the polypropylene material in Mercer in order to improve the strength of the sheet.

The limitations "can be run at line speeds ..." and "at least 10% less than that of a biaxially oriented web made from an extruded sheet with no added beta nulceant and the same starting sheet thickness" and "tensile strength ..." are functional limitations and are deemed to be a latent property of the prior art since the prior art is substantially identical in composition and/or structure. MPEP 2145 (II).

The limitation "extruded" is method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

5. In response to Applicant's request for a telephonic interview, Applicant is welcome to call the undersigned examiner at anytime to set up an interview. The examiner's office hours and telephone number are listed below.

6. Applicant's arguments in the response filed May 23, 2007 regarding the 35 USC 103 rejection over Mercer Jacoby of record have been carefully considered but are deemed unpersuasive.

Applicant argues that no office action this prosecution has provided any suggestion or motivation to combine the disclosure of Mercer with that of Jacoby to arrive at the claimed invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention to use Jacoby's polypropylene material as the polypropylene material in Mercer in order to improve the strength of the sheet. Furthermore, both references are concerned with the production of propylene sheets.

Applicant argues that the declaration of Dr. Philip Jacoby demonstrates that the claimed invention exhibits unexpected results to overcome any such prima facie rejection.

The examiner has carefully considered the declaration, however the declaration is an opinion of the inventor and not commensurate in scope with the instant claims. First, it is Applicant's opinion that claims would not be obvious over the reference of record. There have been no experiments with the prior art preformed. Second, Applicant's description of the

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oriented web products with and without the Beta Nucleation discusses node junctions. There nothing the claims that specify node junction or anything particular about the structure of the perforated sheet. Third, Applicant has not disclosed the specifics about the examples shown in the declarations. For these reasons the declaration is unpersuasive.

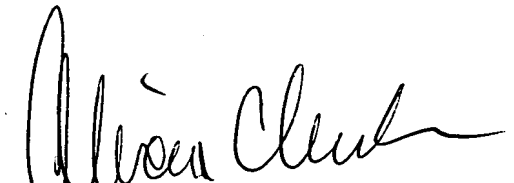
***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac  
6/24/07



**ALICIA CHEVALIER  
PRIMARY EXAMINER**